



NYSUT's Office  
of General Counsel



# KNOW YOUR RIGHTS: Layoff and Recall



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*A Union of Professionals*



**School districts have discretion to abolish positions and layoff teachers and teaching assistants.**

- School districts have broad authority to decide how many employees they need.
- The layoff provisions of the Education Law are triggered upon either the abolition of a teaching position or the reduction of a full-time position to part time.
- A school district will receive substantial legal leeway from the courts and the Commissioner of Education when it comes to questions of financial and educational efficiency so long as the school district acted in good faith.
- A school district may abolish positions held by tenured personnel provided such action is taken in good faith and that the seniority and tenure rights of employees are recognized and respected.

**Seniority in a tenure area is the basis on which particular teachers and teaching assistants should be laid off.**

- If a school district abolishes one or more positions, the services of the teacher having the least seniority within the tenure area of the position abolished shall be discontinued.
- The regulations define “seniority” as the “length of service in a designated tenure area, rather than length of service in the district; such service need not have been consecutive but shall during the term for which seniority credit is sought, have constituted a substantial portion of the time of the professional educator.”
- The protections of seniority accrue when a teacher is appointed to a probationary appointment.
- Certification is not a factor in determining seniority.
- Length of service is defined as actual paid service – days spent on an unpaid leave of absence are not included in determining seniority.
- In order to accrue seniority credit within a tenure area, a professional educator must devote a substantial portion of time to classroom instruction.
- Substantial portion of time is defined as “40 percent or more of the total time spent by a professional educator in the performance of their duties, exclusive of time spent in preparation, monitoring, or in co-curricular activities.”

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\* The content of this pamphlet is for informational purposes only. It does not constitute legal advice, nor does it establish an attorney-client relationship. If you have specific questions regarding your situation, present them to your union representative for consideration and analysis.

## **KNOW YOUR RIGHTS: LAYOFF AND RECALL**

### **BY: NYSUT'S OFFICE OF GENERAL COUNSEL**

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- Teachers serving in two tenure areas at the same time earn seniority credit in both tenure areas, provided the teacher devotes at least 40 percent (40%) of their time to each area.
- Computation of a teacher's seniority includes full-time regular substitute service rendered immediately prior to the teacher's probationary appointment.
- Not all substitute service counts for purposes of seniority – it depends on the facts and circumstances of each case.
- It is possible that two or more teachers could be “tied” on the seniority list if they were appointed by the board of education on the same day at the same meeting.
  - If the Board used separate resolutions to appoint each teacher, the teacher's rank in the order in which the Board adopted the resolutions breaks the tie.
  - If the Board used one resolution to appoint all of the teachers, the district may apply any reasonable method to break a tie in the amount of service.
- As long as the tie-breaking method employed by the district is reasonable and eliminates subjective determinations, a court will not set aside the district's seniority determinations.

### **Laid off teachers and teaching assistants are placed on and may be recalled from a PEL.**

- After a position is abolished, a laid off employee must be placed on a Preferred Eligible List (PEL) and shall be recalled to such vacant positions in the order of their length of service in the system. In the Big 5 city school districts, a former employee can remain on the PEL indefinitely (for other school districts, placement on a PEL ends after seven years).
- There must be a vacancy before there can be a recall to a permanent position.
- Teachers whose positions have been abolished may be entitled to be recalled to an existing vacancy or a newly created vacancy, under certain conditions.
- In order to be recalled from a PEL, three prerequisites must be met: (1) the position sought must be similar to the position abolished, (2) the teacher must be qualified, and (3) the teacher must have seniority in the district.

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**The vacant position must be similar to the abolished position and the person recalled must be qualified.**

- The test of whether duties of two positions are in fact similar is whether more than 50 percent of the functions to be performed by the incumbent of the new position are those which were performed by the teacher in their old position.
- In order for two positions to be similar, the teaching certificate required for the new position must be the same as the certificate required for the old position.

**Particular teachers and teaching assistants are recalled based on their service in the system at the district.**

- Seniority is measured differently for recall than it is for layoff. Layoff is based on seniority in a tenure area, but recall is based on length of service in the district.
- A person on a PEL shall be reinstated or appointed to a vacancy in a similar position in the order of the length of service in the system.
- Service in the system means service of a professional educator as defined in Section 30-1.1 of the Regents' Rules.
- Professional educator is an individual appointed or to be appointed to a full-time position on the professional staff of a school district or board of cooperative educational services, which position has been certified as educational in nature by the commissioner and in which position tenure may be acquired in accordance with the provisions of the Education Law.
- Such service includes long-term substitute service.

**Districts must notify teachers and teaching assistants on the PEL of vacant positions.**

- School districts are required to make reasonable efforts to notify eligible persons of vacancies in order to allow them to accept or reject the position.
- Teachers on the PEL also must be offered regular substitute positions of at least a five-month duration.
- A teacher may decline an offer of reinstatement to such a position without fear of extinguishing their rights on the PEL.
- A teacher does not waive their right to reappointment from the PEL for refusing an offer of reemployment within the district.

**Teachers who have served in more than one tenure area may be able to bump another, less senior, teacher in a previously held tenure area.**

- Teachers who have served in more than one tenure area may have bumping rights.
- These “bumping rights” allow a teacher whose position has been eliminated in one tenure area, and who accrued seniority based on prior service in a different tenure area, to claim the position of another teacher serving in that previous tenure area, provided that the first teacher has more seniority in the tenure area than the other teacher. Teachers who work in one tenure area and then take a new assignment in a different tenure area, and are then laid off from the second tenure area, have the right to “bump” a less senior teacher in their initial tenure area.
- True “bumping” rights are available only to teachers appointed under part 30 of the Regents’ Rules, and they apply only to persons who received a probationary appointment after Aug. 1, 1975.

**Your local union can help.**

- If you believe you were improperly laid off or if you believe you should have been recalled, gather as much information as you can (e.g., probationary/tenure appointments, board resolutions regarding the layoff or recall) and contact your local union representative.
- There are short timelines for enforcing layoff and recall rights – some as short as 30 days – so act swiftly to preserve your rights.

**Your union is here to help.**





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